

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA

Title III

No. 17 BK-3283-LTS

(Jointly Administered)

RE: ECF Nos. 20297 & 20322

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

as representative of

THE PUERTO RICO HIGHWAYS AND
TRANSPORTATION AUTHORITY,

Debtor.

PROMESA

Title III

No. 17 BK-3567-LTS

RE: ECF Nos. 1138 & 1146

**THE BANK OF NEW YORK MELLON'S SUPPLEMENTAL RESPONSE TO
THE ORDER DIRECTING SUPPLEMENTATION OF BRIEFING CONCERNING
URGENT MOTION FOR AN ORDER DIRECTING THE FISCAL AGENT
TO DISBURSE THE DISPUTED FUNDS IN THE HTA BOND SERVICE
ACCOUNTS, REDEMPTION ACCOUNTS, AND RESERVE ACCOUNTS**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801). Title III case numbers are listed as Bankruptcy Case numbers due to software limitations.

To the Honorable United States District Court Judge Laura Taylor Swain:

The Bank of New York Mellon, solely in its capacity as fiscal agent (the “Fiscal Agent”) for several series of bonds (the “HTA Bonds”) issued by the Puerto Rico Highways and Transportation Authority (“HTA”), submits this supplemental response in compliance with the Court’s order [Case No. 17-03283, ECF No. 20322] directing supplementation of briefing concerning the urgent motion [Case No. 17-3283, ECF No. 20297] of The Commonwealth of Puerto Rico and HTA, by and through the Financial Oversight and Management Board for Puerto Rico, for an order directing the Fiscal Agent to disburse the Disputed Funds consistent with the *Amended and Restated Stipulation and Agreed Order Regarding the Disputed Funds in the HTA Bond Service Accounts, Redemption Accounts and Reserve Accounts* (the “Stipulation”) [Case No. 17-03283, ECF No. 20316].²

1. The Fiscal Agent files this supplemental response for the limited purpose of clarifying its position with respect to withholding the amount of its claim for fees and expenses from the Disputed Funds.

2. The Fiscal Agent explained in its original reply that it is entitled under the applicable resolutions to deduct its fees and expenses from any moneys coming into its hands and to a preference in payment over the HTA Bonds.³ The Fiscal Agent understands that “[d]istribution of the Effective Date Payments to satisfy the Debtors’ obligations pursuant to [decretal paragraph 52 of the Confirmation Order] will be facilitated through the Fiscal

² Capitalized terms used but not defined in this supplemental response have the meanings given in the Stipulation or the Plan, as applicable.

³ See *The Bank of New York Mellon’s Reply to the Objection of Assured Guaranty Corp., Assured Guaranty Municipal Corp., Financial Guaranty Insurance Company, and National Public Finance Guaranty Corporation With Respect to (I) Urgent Motion for an Order Directing the Fiscal Agent to Disburse the Disputed Funds in the HTA Bond Service Accounts, Redemption Accounts, and Reserve Accounts and (II) Amended and Restated Stipulation and Order Regarding the Disputed Funds in the HTA Bond Service Accounts, Redemption Accounts and Reserve Accounts* [Case No. 17-3283, ECF No. 20321] ¶¶ 14-23.

Agent.”⁴ Upon payment of the balance of the Effective Date Payments to the Fiscal Agent, the Fiscal Agent has committed not to apply its fees and expenses against the Disputed Funds, but reserves its right to deduct the same from the balance of the Effective Date Payments or other funds coming into its hands. Accordingly, subject to the Fiscal Agent’s receipt of the balance of the Effective Date Payments or other funds sufficient to satisfy its fees and expenses, the entire amount of the Disputed Funds will be made available and paid to holders of the HTA Bonds. Absent receipt of the balance of the Effective Date Payments or other funds sufficient to satisfy its fees and expenses, “[n]othing in [the] Stipulation affects the Fiscal Agent’s right to be reimbursed for any and all of the Fiscal Agent’s fees and expenses from distributions to be made pursuant to the Plan, in accordance with the applicable resolutions,” including the Disputed Funds. See Stipulation ¶ 5. This approach is consistent with the Fiscal Agent’s contractual rights vis-à-vis non-debtors under the applicable resolutions and the terms of the Stipulation.

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⁴ *Reply of the Financial Oversight and Management Board for Puerto Rico in Support of Urgent Motion for an Order Directing the Fiscal Agent to Disburse the Disputed Funds in the HTA Bond Service Accounts, Redemption Accounts, and Reserve Accounts* [Case No. 17-3283, ECF No. 20320] ¶ 6 n.6.

Dated: March 15, 2022

Respectfully submitted,

**SEPULVADO, MALDONADO &
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